

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

**PERMIT FOR DIVERSION AND USE OF WATER**

PERMIT 21097

Application 29711 of      **Edward T. Bennett and Deborah S. Cahn**  
                                 **P.O. Box 47**  
                                 **Philo, CA 95466**

filed on **April 4, 1990**, has been approved by the State Water Resources Control Board (SWRCB)  
SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

**Permittee is hereby authorized to divert and use water as follows:**

1.    Source of water

Source	Tributary to
<b>Unnamed Stream</b>	<b>Navarro River thence</b>
_____	<b>Pacific Ocean</b>
_____	_____
_____	_____
_____	_____

within the County of **Mendocino**

2.    Location of point of diversion

By California Coordinate System in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)	Township	Range	Base and Meridian
<b>North 524,100 feet and East 1,581,750 feet</b>	<b>SE ¼ of SE ¼</b>	<b>2</b>	<b>14N</b>	<b>15W</b>	<b>MD</b>

3. Purpose of use	4. Place of use	Section (Projected)	Township	Range	Base and Meridian	Acres
<b>Fire Protection</b>	<b>At reservoir w/i</b>					
<b>Recreational</b>	<b>SE ¼ of SE ¼</b>	<b>2</b>	<b>14N</b>	<b>15W</b>	<b>MD</b>	
<b>Frost Protection</b>	<b>SE ¼ of SE ¼</b>	<b>2</b>	<b>14N</b>	<b>15W</b>	<b>MD</b>	<b>18</b>
<b>Irrigation</b>	<b>SW ¼ of SW ¼</b>	<b>1</b>	<b>14N</b>	<b>15W</b>	<b>MD</b>	<b>15</b>

The place of use is shown on map on file with the SWRCB.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 30 acre-feet per annum to be collected to storage from December 15 of each year to March 31 of the succeeding year.

(0000005c)

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

(0000005i)

6. Complete construction and application of the water to the authorized use shall be made by December 31, 2011.

(0000009)

7. The SWRCB reserves jurisdiction to impose conditions to conform this permit to SWRCB policy on use of water for frost protection. Action by the SWRCB will be taken only after notice to interested parties and opportunity for hearing.

(0000020)

8. Permittee shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel in order that water entering the reservoir which is not authorized for appropriation under this permit can be released. Before starting construction, permittee shall submit plans and specifications of the outlet pipe, or alternative facility, to the Chief of the Division of Water Rights for approval. Before storing water in the reservoir, permittee shall furnish evidence, which substantiates that the outlet pipe has been installed in the dam. Evidence shall include photographs showing completed works or certification by a registered Civil or Agricultural Engineer.

(0050043a)

9. During the authorized season of diversion, permittee shall bypass 0.1 cfs in the unnamed stream as measured at the point of diversion, or the actual flow, whichever is less.

(0140060)

10. No water shall be diverted under this permit until permittee has installed a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the bypass flow required by the conditions of this permit. Said measuring device shall be properly maintained.

(0060062a)

11. In accordance with section 1601, 1603, and/or section 6100 of the Fish and Game Code, no work shall be started on the diversion works and no water shall be diverted under this permit until permittee has entered into a stream or lake alteration agreement with the California Department of Fish and Game and/or the Department has determined that measures to protect fishlife have been incorporated into the plans for construction of such diversion works. Construction, operation, and maintenance costs of any required facility are the responsibility of the permittee.

(0000063)

12. The total quantity of water diverted under this permit, together with that diverted under Licenses 12918, 12919, and 12951 issued pursuant to Applications 25007A, 25007B, and 28227, shall not exceed 16 AFA on the 8 acres of place of use for which these rights have in common.

(0000114b)

13. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; and locally darkened midden soils containing some to the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; old trails; and structure and feature remains such as building foundations and dumps. The Chief of the Division of Water Rights shall be notified of the discovery and a professional archeologist shall be retained by the applicant to evaluate the find and recommend appropriate mitigation. Project related activities in the area of the find shall resume only after the completion of the recommended mitigation, as approved by the Chief of the Division of Water Rights.

(0380500)

14. Permittee shall not use more water under basis of riparian right on the place of use authorized by this permit than permittee likely would have used absent the appropriation authorized by this permit. Consistent with this term, permittee may not divert any water for use on the place of use authorized by this permit under basis of riparian right. With the Chief of the Division's approval, this limitation may be modified, and permittee may use water under basis of riparian right on the authorized place of use, provided that permittee submits reliable evidence to the Chief of the Division quantifying the amount of water that permittee likely would have used under basis of riparian right absent the appropriation authorized by this permit. The Chief of the Division is hereby authorized to approve or reject any proposal by permittee to use water under basis of riparian right on the place of use authorized by this permit.

(0990999)

15. Within 6 months of the issuance of this permit, the Permittee shall submit a Compliance Plan for approval by the Chief of the Division of Water Rights that will demonstrate compliance with the flow bypass terms specified in this permit. The Compliance Plan shall include the following:

- a) A description of the physical facilities (i.e., outlet pipes, siphons, pipelines, bypass ditches, splitter boxes etc.) that will be constructed or have been constructed at the project site and will be used to bypass flow.
- b) A description of the gages and monitoring devices that will be installed or have been installed to measure stream flow and/or reservoir storage capacity.
- c) A time schedule for the installation of these facilities.
- d) A description of the frequency of data collection and the methods for recording bypass flows and storage levels.
- e) An operation and maintenance plan that will be used to maintain all facilities in good condition.

The Permittee shall be responsible for all costs associated with developing the Compliance Plan, and installing and maintaining all flow bypass and monitoring facilities described in the Compliance Plan.

The monitoring data shall be maintained by the permittee for ten years from the date of collection and made available to the Chief of the Division of Water Rights, upon request.

Any non-compliance with the terms of the permit shall be reported promptly to the Chief of the Division of Water Rights

Diversion and use of water prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized and is considered a trespass against the state which may be subject to the imposition of Administrative Civil Liabilities of up to \$500 per day in accordance with section 1052 of the Water Code.

(0990999)

16. No diversion of water is authorized under this permit until the permittee has submitted a land management plan that is acceptable to the Chief of the Division of Water Rights. The plan shall describe the specific measures to be taken to minimize erosion and sedimentation, protect the riparian corridor, and stabilize streambanks. The permittee shall refer to measures described in the Navarro Watershed Restoration Plan dated June 1998. The plan shall include a time schedule for implementation of the elements included in the plan.

(0990999)

17. Permittee shall replant three oak trees for every one oak tree removed at the project site. The replanting shall consist of trees native to Mendocino County and can be either acorn planting or container seedlings. Permittee shall maintain replacement trees for a period of five years and insure a survival rate of 75 % at the end of five years.

(0990500)

**ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD  
ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

- A. Permittee shall maintain records of the amount of water diverted and used to enable SWRCB to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.
- B. The amount authorized for appropriation may be reduced in the license if investigation warrants.
- C. Progress reports shall be submitted promptly by permittee when requested by the SWRCB until a license is issued.
- D. Permittee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by said SWRCB, reasonable access to project works to determine compliance with the terms of this permit.
- E. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source.

Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

F. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the SWRCB if, after notice to the permittee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

G. This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

***This permit is issued and permittee takes it subject to the following provisions of the Water Code:***

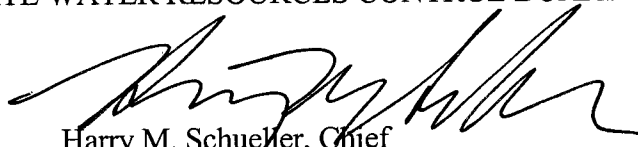
*Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.*

*Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.*

*Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).*

Dated: APR 20 2001

STATE WATER RESOURCES CONTROL BOARD

  
Harry M. Schueler, Chief  
Division of Water Rights